

John A. Elardo, Esq. #015043
Rochelle D. Prins, Esq. #031393
ELARDO, BRAGG & ROSSI, P.C.
3001 East Camelback Road, Suite 130
Phoenix, Arizona 85016
(602) 889-0272 File No.: 43-61
Minute Entries: court@ebarlaw.com
e-mail: jelardo@ebarlaw.com
rprins@ebarlaw.com
Attorneys for Defendant Electric Insurance Company

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

JESSICA GAUDET, HEIDI GAUDET, and)
MELISSA GAUDET, individually, as)
surviving beneficiaries of Bruce Gaudet ,)

Plaintiffs,)

vs.)

ELECTRIC INSURANCE COMPANY, a)
Massachusetts company; JOHN and JANE)
DOES I through X, fictitious individuals;)
ABC CORPORATION I-X; MUNICIPAL)
CORPORATIONS I-X; XYZ)
PARTNERSHIPS, SOLE)
PROPRIETORSHIPS and/or JOINT)
VENTURES I-X, fictitious entities,)

Defendants.)

Case No.:

**DEFENDANT'S NOTICE OF
REMOVAL**

(Maricopa County Superior Court Case
No.: CV2017-000283)

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Electric Insurance
Company ("Electric"), by and through its undersigned counsel, hereby removes the civil
action, CV2017-000283, from the Superior Court of Arizona, in Maricopa County, to the

United States District Court for the District of Arizona, Phoenix Division. In support of the removal, Electric states as follows:

A. THIS COURT HAS JURISDICTION PURSUANT TO 28 U.S.C. § 1332

1. The Matter is Between Citizens of Different States

Plaintiffs Jessica Gaudet, Heidi Gaudet, and Melissa Gaudet (collectively, “Plaintiffs”) are residents and citizens of Clark County, in the state of Nevada. (*See* Complaint, *attached as Exhibit A*, ¶¶ 1-3). Defendant Electric is an insurance company incorporated and existing under the laws of the State of Massachusetts, with a principal place of business at 75 Sam Fonzo Drive, Beverly, Massachusetts 01915. Accordingly, Electric is a citizen of Massachusetts. *See* 28 U.S.C. § 1332(c)(1). There are no other legitimate parties, as all other defendants are purely fictitious. (*See Exhibit A*, ¶ 9). *See* 28 U.S.C. § 1441(b)(1) (fictitious names shall be disregarded). Accordingly, there is complete diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

2. The Amount in Controversy Exceeds \$75,000.

The determination of diversity jurisdiction is made as of the time of removal. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283 (1938); *see also Rogers v Wal-Mart Stores, Inc.*, 230 F.3d 868, 871 (6th Cir. 2000). Included in the calculation of the jurisdictional minimum are general damages, special damages, punitive damages, and attorneys’ fees. *See Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046 n.3 (9th Cir. 1998); *Galt G/S/ v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

The court first considers whether it is “facially apparent” from the allegations of the complaint that plaintiff seeks more than the jurisdictional limits. *See Singer v. State*

1 *Farm Mut. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997). The Court may also consider and
2 weight extrinsic evidence. *Id.*; *see also Del Real v. Healthsouth Corp.*, 171 F.Supp.2d
3 1041, 1043 (D. Ariz. 2001); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115 (9th Cir. 2004)
4 (evidence such as judicial admissions and demand letters are satisfactory proof that the
5 amount in controversy probably exceeds the jurisdictional minimums). Here, Plaintiffs'
6 Complaint provides that Plaintiffs seek more than thirty million dollars (\$30,000,000).
7 (See **Exhibit A**, ¶ ¶ 35, 77). Plaintiffs' claims are based, in part, on three default
8 judgments, one in favor of each Plaintiff and against Michael Lee Crane, whom Plaintiffs
9 have alleged is or was Electric's insured, in the amount of ten million (\$10,000,000). (See
10 Default Judgment in favor of Heidi Gaudet, *attached as Exhibit B*; See Default Judgment
11 in favor of Melissa Gaudet, *attached as Exhibit C* See Default Judgment in favor of
12 Jessica Gaudet, *attached as Exhibit D*). Accordingly, the amount in controversy here
13 exceeds the jurisdictional minimum.
14

15 **B. THIS NOTICE OF REMOVAL IS TIMELY**

16 Plaintiffs filed their Complaint in the Superior Court of Arizona, County of
17 Maricopa, on February 23, 2017. (See **Exhibit A**). The Complaint was served on the
18 Arizona Department of Insurance on May 16, 2017. (See Summons, *attached as Exhibit*
19 **E**). Electric Insurance Company received service of the Complaint on May 22, 2017. (See
20 Copy of Date-Stamped Envelope in which Electric received Complaint, Summons,
21 Demand for Jury Trial, and Certificate regarding Arbitration, *attached as Exhibit F*).
22

23 This Notice of Removal, therefore, has been timely filed within 30 days of receipt
24 by Electric. See 28 U.S.C. § 1446(b).
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1 **C. CONCLUSION**

2 Based on the foregoing, the District Court has jurisdiction under 28 U.S.C. §
3 1332(a) and this matter is removable based on diversity of citizenship under § 1441(b) of
4 the same title. Electric has attached copies all process, pleadings, and orders served upon
5 it in the subject action pursuant to 28 U.S.C. § 1446(A). *See Exhibits A; E; F; Demand*
6 *for Jury Trial, attached as Exhibit G; and Certificate regarding Arbitration, attached as*
7 *Exhibit H).* Electric concurrently filed a copy of this notice with the Arizona Superior
8 Court, Maricopa County and served upon Plaintiffs a copy of this notice.
9

10 Accordingly, Electric respectfully requests that this matter be removed to the
11 United States District Court for the District of Arizona, Phoenix Division.
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13

14
15 Dated this 2nd day of June, 2017.

16 **ELARDO, BRAGG & ROSSI, P.C.**

17
18 By /s/ Rochelle D. Prins
19 John A. Elardo, Esq.
20 Rochelle D. Prins, Esq.
21 3001 East Camelback Road, Suite 130
22 Phoenix, Arizona 85016
23 *Attorneys for Defendant*
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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

Copy e-filed with the Maricopa County Superior Court:

Honorable Daniel Kiley
MARICOPA COUNTY SUPERIOR COURT
201 West Jefferson
Phoenix, Arizona 85003

Copy mailed this 2nd day of June, 2017, to:

Robert K. Lewis, Esq.
Christopher A. Treadway, Esq.
LEWIS LAW FIRM, PLC
2302 N. 3rd Street
Phoenix, Arizona 85004
rob@lewisandpokora.com
chris@lewisandpokora.com
Attorneys for Plaintiffs

/s/ K. Edmondson